

JOHN GILBERT vs. APC NATCHIQ, INC.  
CASE NO.: 3:03-CV-00174-RRB

DEPOSITION OF DOUGLAS L. SMITH  
JUNE 1, 2006

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

JOHN GILBERT,

Plaintiff,

vs.

APC NATCHIQ, INC.

Defendants.

Case No. 3:03-CV-00174-RRB

DEPOSITION OF DOUGLAS L. SMITH  
June 1, 2006

APPEARANCES:

FOR THE PLAINTIFF:

MR. KENNETH L. COVELL  
Attorney at Law  
712 Eighth Avenue  
Fairbanks, Alaska 99701  
(907) 452-4377

FOR THE DEFENDANTS:

MS. PATRICIA L. ZOBEL  
DeLisio Moran Geraghty &  
Zobel  
Attorneys at Law  
943 West Sixth Avenue  
Anchorage, Alaska 99501  
(907) 279-9574

ALSO PRESENT:

MR. JOHN GILBERT

\* \* \* \*

EXHIBIT E  
PAGE 1 OF 3

JOHN GILBERT vs. APC NATCHIQ, INC.  
CASE NO.: 3:03-CV-00174-RRB

POSITION OF DOUGLAS L. SMITH  
JUNE 1, 2006

Page 6

1 is it correct that the general organizational scheme  
2 in the way of hierarchy in health and safety would be  
3 there are safety specialists, safety supervisor, and  
4 then you, and you title at that time, tell me again,  
5 was safety.....  
6 A I was hired as a safety manager which was a new  
7 position for that organization.  
8 Q Okay. I see.  
9 A That -- that position did not exist prior to my  
10 arrival.  
11 Q Okay. Prior to your arrival, was there a corporate  
12 safety man in Anchorage?  
13 A There was a safety supervisor on site.  
14 Q Okay.  
15 A And that was Ron Kirk.  
16 Q Okay. And then who would Ron -- who was Ron's direct  
17 report I think is how you guys like to put it?  
18 A Yeah, at that time Ron was a direct report to Gary  
19 Buchanan as the safety supervisor in the department.  
20 And.....  
21 Q And was Gary.....  
22 A .....the specialists.....  
23 Q .....in Anchorage or was Gary.....  
24 A Gary -- Gary was Anchorage-based.  
25 (Telephone ringing)

Page 7

1 Q Okay.  
2 MS. ZOBEL: Do you need to take a.....  
3 A No, I'm just turning it off. Sorry.  
4 MS. ZOBEL: Okay.  
5 A Gary was based on the Slope. He was the project  
6 manager or contract business manager for the Kuparuk  
7 contract. He was the operations manager.  
8 Q Okay. And is that different than unit supervisor?  
9 A Business unit manager, those guys have had a multitude  
10 of titles. We refer to them as the contract manager  
11 or business unit manager, and they were responsible  
12 for the entire operational contract for APC at  
13 Kuparuk.  
14 Q So the safety supervisor would answer to Buchanan in  
15 the unit manager or similar position?  
16 A Yes, prior to my arrival, Ron Kirk reported to Gary  
17 Buchanan.  
18 Q And then was there a safety guy in Anchorage that was  
19 higher up the food chain or not?  
20 A Yes, there was a corporate safety manager. At that  
21 time it was Scott Brower.  
22 Q Okay. All right. Let's see, what did you do to  
23 prepare for your deposition today, if anything?  
24 A Came yesterday and just, you know, knowledge of the  
25 events since I was present, but that's about it.

Page 8

1 Q Okay. Did you ever do an evaluation of the safety  
2 specialist position to determine whether it was exempt  
3 or non-exempt from overtime?  
4 A Yes. The -- in fact, I had been involved in an  
5 evaluation at a previous employer with that position.  
6 And after I arrived at this company, we discussed the  
7 position, exempt versus non-exempt. And one thing  
8 that's important is that one of the things we worked  
9 -- always worked against or was a bit of an issue is a  
10 lot of positions, can (indiscernible) extra hours in  
11 the specialist field around the country are being paid  
12 in an exempt mode, so by us defining those as non-  
13 exempt was -- we felt was correct with the  
14 determination of the labor law, but was not exactly  
15 industry standard. So we were always sort of with the  
16 uphill battle to move these two hourly, not within the  
17 company, but just as a general industry position. So  
18 we evaluated the positions based on the -- the  
19 Department of Labor checklist provided at the time,  
20 and determined that these positions would were -- most  
21 likely would be better suited to be under hourly  
22 positions. And the guys who were having call-outs in  
23 the evening and such, the nature of the embedded  
24 employees, were being called out, so there was a move  
25 to move them to hourly after I arrived there. But it

Page 9

1 took some time to change the contract language, put  
2 the rates in, and effect the changed for the  
3 specialists.  
4 Q Okay. And did that then actually happen on or after  
5 April of '03?  
6 A It happened March 1st of '03 is when we finally got  
7 the -- what we call employee information records, a  
8 status change actually into payroll and changed the  
9 specialist' pay rates to hourly was March 1 of '03.  
10 Q And when did the guys in the field -- and we're  
11 talking safety.....  
12 A Specialists.  
13 Q .....supervisor here?  
14 A Safety specialist.  
15 Q Oh, okay. All right. Safety specialist. All right.  
16 A And at the same time, we -- I evaluated personally  
17 with Gary Buchanan the position that Ron Kirk had  
18 previously held as safety supervisor. And it's  
19 important to understand the chain.....  
20 MS. ZOBEL: Let's.....  
21 A .....of progression.  
22 MS. ZOBEL: Let's wait until he asks the  
23 question.  
24 A Yeah.  
25 Q (By Mr. Covell) Okay.

EXHIBIT E  
PAGE 2 OF 3

3 (Pages 6 to 9)

JOHN GILBERT vs. APC NATCHIQ, INC.  
CASE NO.: 3:03-CV-00174-RRB

POSITION OF DOUGLAS L. SMITH  
JUNE 1, 2006

Page 10

1 A Yeah. Well, you were asking about which position  
2 we're talking about. The safety supervisor position  
3 was evaluated separate of the specialist. Only --  
4 only the specialists were changed March 1st. I just  
5 want to clarify that.  
6 Q Okay. Was the safety supervisor eventually changed?  
7 A No, the position was eliminated.  
8 Q Okay. And what filled the void, if anything?  
9 A There currently exists a position there now that's  
10 called a safety coordinator, and does not have a  
11 supervisory title. That is an hourly-based position.  
12 Q Okay. And then your former job, does that still  
13 exist, safety manager, if that's.....  
14 A It does.  
15 Q .....the right -- okay. Okay. And when did the --  
16 well, did the supervisor job go away contemporaneous  
17 with the coordinator job arriving?  
18 A There was a void of -- of no position for several  
19 months prior to -- we had a staffing reduction, and  
20 the job was eliminated. Several months it was vacant  
21 before they recreated the coordinator position. That  
22 was after my departure.  
23 Q Okay. All right. So to summarize this, and correct  
24 me if I'm putting it wrong, you and Mr. Buchanan at  
25 some point began a review of safety specialists, and

Page 11

1 as of March 1 of '03 recategorized it as non-exempt,  
2 in other words entitled to overtime is.....  
3 A That's correct.  
4 Q Okay. And then subsequent to that, or perhaps  
5 parallel, but somewhat in a latter phase, you  
6 evaluated safety supervisor, eliminated the position,  
7 there's a two-month gap between safety supervisor and  
8 safety coordinator, and created a safety coordinator  
9 position that was entitled to overtime?  
10 A Well, I need to clarify a few points.  
11 Q Sure.  
12 A One, the safety supervisor position.....  
13 MS. ZOBEL: That's fine. Go ahead.  
14 A Yeah, there's a few points you made that are not  
15 correct.  
16 MS. ZOBEL: Okay.  
17 Q (By Mr. Covell) Okay.  
18 A So a couple points of clarification. The safety  
19 supervisor position was evaluated in parallel to the  
20 specialist, whether it was exempt or non-exempt.  
21 Q Okay.  
22 A The supervisor position was eliminated as a force  
23 reduction.  
24 Q Okay.  
25 A A budget reduction, and was vacant for a number of

Page 12

1 months, and I couldn't tell you exactly how many  
2 unless I went and looked at records.  
3 Q That's fine.  
4 A But longer than -- longer than six months before we --  
5 that job was refilled as a coordinator role and made  
6 hourly.  
7 Q Okay. Approximately when did the process of the  
8 review begin if as to safety specialist it ended March  
9 1, '03? You know, what it two months, six months, a  
10 year and a half?  
11 A The review started in '02, and from many of the notes  
12 that you've already seen, it was being discussed  
13 as early as February of '02.  
14 Q Okay. And which notes are you referring to?  
15 A Some of the notes that were reviewed yesterday where  
16 John had related information to the specialist that  
17 the hourly rates were being reviewed.  
18 Q Okay. And you saw those notes yesterday?  
19 A I did.  
20 Q Okay. Besides the ones yesterday, is there any  
21 written commemoration of your actions in conducting  
22 the review of the safety specialist and/or safety  
23 supervisor job for reclassification?  
24 A I went to work there in December of '01, so they  
25 started immediately after my arrival. And the

Page 13

1 information was being disseminated down from my  
2 position to -- to John's position about the initiative  
3 to review and possibly change these to hourly.  
4 MS. ZOBEL: I think what he's looking for is  
5 do you have any records that.....  
6 A Not that I've been.....  
7 MS. ZOBEL: .....have not been produced?  
8 A .....able to locate, no.  
9 Q (By Mr. Covell) Let me be as hopefully direct and  
10 clear as possible. What I envision is perhaps there's  
11 a file folder that says, review of safety specialist  
12 job for transfer from exempt to non-exempt, and there  
13 being, you know, 2 or 10 or 50 papers in there.  
14 A None that I have been able to locate.  
15 Q Okay. When you were doing this process, did you  
16 generate paperwork?  
17 A No. And it was direct verbal conversation between  
18 myself and Gary Buchanan.  
19 Q Okay. So is it fair to say other than what you've  
20 seen, you wouldn't expect there to be anything else in  
21 the way of paperwork?  
22 A Not that I can personally locate, no.  
23 Q Okay. All right. That was easy, right? Okay. And  
24 then prior to your arrival, are you aware of any  
25 review or clas -- or review for appropriateness of

4 (Pages 10 to 13)